

## UIIdaho Law Digital Commons @ UIIdaho Law

---

Not Reported

Idaho Supreme Court Records & Briefs

---

9-29-2014

# Mertens v. Estate of Mertens Appellant's Brief Dckt. 41866

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"Mertens v. Estate of Mertens Appellant's Brief Dckt. 41866" (2014). *Not Reported*. 1829.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/1829](https://digitalcommons.law.uidaho.edu/not_reported/1829)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

**IN THE  
SUPREME COURT OF THE STATE OF IDAHO**

IN THE MATTER OF THE ESTATE OF )  
MARCELLA MERTENS AND GORDON )  
MERTENS, DECEASED )  
\_\_\_\_\_ )

ROBERT LEON MERTENS, )  
Petitioner-Appellant )

vs. )

ESTATE OF MARCELLA MERTENS )  
AND GORDON MERTENS, )  
\_\_\_\_\_ )

Case No. 41866-2014

Bonner County No. 2004-576

**APPELLANT'S OPENING BRIEF**

---

Appealed from the District Court of the First  
Judicial District of the State of Idaho, in and  
for the County of Bonner and the Idaho Court of Appeals

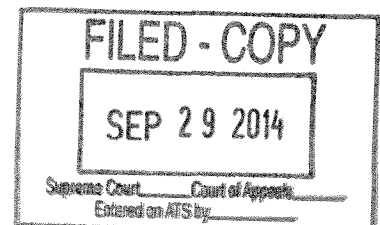
---

Robert Mertens, Pro Se  
Reg. No. 95642-024  
FCI Pekin  
P.O. Box 5000  
Pekin, IL 61555-5000

**APPELLANT ACTING PRO SE**

James Theodore Diehl  
Attorney at Law  
106 West Superior Street  
Sandpoint, Idaho 83864

**ATTORNEY FOR RESPONDENT**



## STATEMENT OF FACTS

This appeal relates to the Probate of the Estate of Marcella and Gordon Mertens, who were husband and wife, and were residents of Bonner County, Idaho, at the time of their deaths. Gordon and Marcella had four children, one of which predeceased both Gordon and Marcella. The Appellant, Robert Mertens, is one of three surviving children and is the individual who was identified as the Personal Representative in the last Will and Testament of both Gordon and Marcella. Gordon Mertens was the first to die and Robert Mertens was appointed to act as the Personal Representative for the Gordon Mertens Estate and that estate was closed in 1994.

At the time of Marcella Mertens' death on March 21, 2004, Robert Mertens was incarcerated on Federal drug violations, Federal firearm violations and Federal money laundering violations, which case was filed in the United States District Court for the District of Idaho as United States v. Robert Leon Mertens, No. CR-03-073-N-EJL.

On April 1, 2004, Robert Mertens nominated Attorney Dan Featherston to act as Personal Representative. Dan Featherston filed an Application for Informal Probate in the Magistrate's Division of the First Judicial District of the State of Idaho, in and for the County of Bonner as Case No. CV-2004-576. Subsequently, Robert Mertens and his sister, Darlene Spaulding, separately moved for removal of Featherston as personal representative, and such asked to be appointed as successor personal representative. On May 24, 2005, the Honorable Barbara Buchanan, Magistrate Judge, entered an order for supervised administration and appointed Patricia Scutier to replace Dan Featherston as personal representative and appointed attorney J.T. Diehl to represent Ms. Scutier.

This is so even though the Last Will and testament of Marcella Mertens contained a non-intervention clause. See - Listed under - 6/13/14 clerk's certificate of Exhibits "Petition for Removal of Personal Representative for cause and for Appointment of Successor Personal Representative," filed April 11, 2005.

After numerous hearings to address various estate matters, Ms. Scutier entered into a Stipulation with the United States Government resulting in an Order for Final Distribution to Robert Mertens being entered on November 21, 2008. The Magistrate's decision for Final Distribution to Robert Mertens being entered on November 21, 2008. The Magistrate's decision for Final Distribution to Robert Mertens was appealed to the District Court and on June 23, 2010, the Honorable Charles Hosack, District Court Judge, affirmed the decision of the Magistrate.

Robert Mertens subsequently appealed the District Court's order to the Idaho Supreme Court. This Court remanded the matter to the Idaho Court of Appeals, and the Order of Final Distribution was vacated and the case remanded back to the Magistrate Court on January 17, 2012. Since certain issues were overlooked by the Magistrate and District Court adversely on Jan. 7, 2014, this appeal presents:

- Professional fees were paid to Court appointed Estate Representatives for blatant misconduct and mismanagement of Estate proceeds.
- In addition, because of Attorney-James Theodore Diehls erroneous and unethical statements made to the Magistrate Court regarding ownership of the stocks, it caused considerable expense and injury to Mertens which was not addressed by the lower courts over Mertens numerous objections.

Robert Mertens' mother, Marcella Mertens, died on March 21, 2004. Her will appointed Robert to act as personal representative of her estate and further provided:

... I own my home and real property on Syringa Heights, Sandpoint, Idaho, and my investment and stock portfolio jointly with my son, ROBERT L. Mertens.

The will further directed that after payment of debts and expenses of the estate, the residue was to be divided among five other individuals including Robert's sisters, Darlene Spaulding and Charmaine Shields. Probate proceedings were initiated in

the Magistrate Court for Bonner County. <sup>FN.1</sup> (R:67-70)

At the time of Marcella's death, Robert Mertens was in Federal detention awaiting trial. On April 1, 2004, Robert renounced his right to serve as personal representative of his mother's estate, stating that his detention "will make it impossible... to be free to perform the duties of Personal Representative," and nominated his attorney, Daniel Featherston, to serve until his release from custody. Featherston accepted the appointment, and the Court issued letters commencing administration arguments of Marcella's estate ("the estate") on April 2, 2004. (R:71, 72)

On October 7, 2003, the Honorable U.S. Court Judge-James Fitzgerald issued a Federal Stipulation order releasing \$37,174.30 worth of stocks to Mertens which Estate Attorney-Diehl and Daniel P. Featherston violated by deliberately withholding these stocks from Mertens which the lower Court's unfairly fail to recognize or address. (R:150, 151, 133, 136, 179-187, 278-295, 374, 375, 482-484, 514-517, 721, 707-709, 884-885, 578

- A. See listed under - 6/13/14 clerk's certificate of Exhibits, "Executor's Motion To Intervene as Personal Representative in testacy, filed 3/30/05, Exhibit-4."
- B. "Petition for Removal of Personal Representative for cause and appointment of Successor Personal Representative, filed April 11, 2005, attachment 2 and Exhibit-A"
- C. "Notice to the Court," filed May 23, 2007, attachment-3.
- D. "Mertens' request for removal of Personal Representative and stated objections to Estate matters," filed August 20, 2007.
- E. "Robert Mertens' Reply Brief" filed July 31, 2009, page-3, Exhibit-G, QQ, OO.

---

FN.1

Excerpts from the record have been cited to verify Mertens' allegations.

At a March 7, 2007 Hearing, the Magistrate Court irresponsibly approved a five-thousand and seventy dollar (\$5,070.00) payment made to attorney-Daniel P. Featherston, for illegally withholding the aforementioned stocks for almost 2-years and committing serious misconduct. which should now be ordered returned. (R:514, 515)

Lower Court erred by not imposing all sanctions against attorneys Diehl and Featherston, and Estate Personal representative-Patricia Scutier, and other individuals mentioned in Mertens' motions, which Mertens requested throughout the Probate Proceedings, which should now be ordered imposed. (R:282, 298, 482, 483, 514, 515, 578, 582, 745, 707-709, 734, 739, 578, 941, 942, 1072-1074, 1070, 966-967.

F. See listed under - 6/13/14 clerk's certificate of Exhibits, "Notice to the Court," filed May 23, 2007, page-5, 10, 11.

G. "Robert Mertens' Reply Brief" filed July 31, 2009, page-3 to 7.

Attorney-James Theodore Diehl, unethically claimed stocks in Mertens ownership and or interest in the amount of \$19,902.80 which were released to Mertens by the October 7, 2003, stipulation order which caused Mertens major harm and expense which the lower court fails to address.

On July 2, 2013, the Magistrate Court issued the final Estate closing order in which Mr. Mertens was appealing and a unfair denial directly related to the judgment of this case on Jan. 7, 2014. (R:1488-1490, 1530)

On August 2, 2013, in a timely fashion Mertens mailed to the Magistrate Court by certified mail "Notice of appeal, Court rule 83(f)", and a notarized fully completed, "Motion and affidavit for fee waiver form." On August 9, 2013, clerk of Court Lanra Taylor, received and signed for these documents, (R:1496-1506)

On September 3, 2013, Magistrate Judge-Lori T. Meulenberg, unfairly denied Mertens-motion and Affidavit for fee waiver ["because"] Mr. Mertens has recently received over \$13,000 from the Estate, even though Mertens timely fee waiver form

verifies that Mertens was and is currently indigent. Mr. Mertens was awarded \$13,771.50 in this case on July 2, 2013 but all those funds were utilized with 28 days to pay back funds borrowed over the last 7-years that were used by Mertens to contest prejudice Estate proceedings which were verified by the Idaho Court of Appeals rulings on January 17, 2012 that remanded this case back to the Magistrate Court. Also, the clerk of the District Court R. Ann Dustin-Sater, did not mail the September 3, 2013 fee waiver denial notice to Mr. Mertens until September 16, 2013 which Mertens received in F.C.I. Institutional mail on September 23, 2013. (R:1147, 1507)

On September 30, 2013 the Magistrate Court reversed and approved the waiver of fees. Then the Court filed Mr. Mertens' "Amended Notice of Appeal, pursuant to Rule 83(f)." to the District Court on 10/15/13 over two months later, when he timely filed his original "notice of appeal" on August 9, 2013. (R:1509, and See listed under - 6/13/14 clerk's certificate of Exhibits, "Request for Order approving Waiver of Fees." filed September 26, 2013, Exhibit-A

Mertens filed his "Amended notice of appeal" to the District Court upon order of this Court after he originally filed his timely "Notice of appeal", within the forty-two (42) day time limit for filing of an appeal from the Magistrate division of the Court. (R:1510-1513, 1553)

Mr. Mertens asserts that he had a legal right to file a notice of appeal from the final judgment/order on July 2, 2013 which he was well-within the forty-two (42) day of filing a notice of appeal which should give this Honorable Court the right to review and consider all meritorious issues raised in this appeal.

Mr. Mertens also argues that it was the Magistrate Court's error for not granting his fee waiver form on September 3, 2013 that was timely filed on August 9, 2013, which initiated the unfortunate events of Mr. Mertens' appeal of the July 2, 2013 "Final Estate closing order" being unfairly denied. (R:1527)

The Probate Court Erroneously Refused to Provide Mertens With Access to the Stock Certificates.

Mertens' major claim of error involves the management, liquidation, and

distribution of various stocks and related funds. Among the assets seized by the Federal Government, as part of Robert's criminal case, was a portfolio of stocks variously held in the names of Gordon Mertens, Marcella, Robert personally, Robert as executor of Gordon's estate, or some combination of Gordon, Marcella, and Robert. In late 2003, the Federal Government released the stock certificates to allow Robert to liquidate the stock and hire counsel for his criminal trial, and the certificates were given to Featherston. Robert filed a number of requests with the Probate Court to release the stocks to him to allow him to hire counsel for his criminal appeal. Throughout these proceedings, Mertens has consistently maintained that he was entitled to 100% of the stock portfolio that he inherited as a result of his mother and father passing away. See Court Transcript of 11/21/05, p.4-7, 11; Transcript 3/7/07, p.10. (R:192-195, 333-336, 348.)

Despite the Federal Government's order (R:150) allowing this liquidation to occur and the release of the portfolio to Featherston, the former personal representative refused to abide by the terms of the Federal order (R.141-146). Even though Mertens repeatedly insisted that these funds should be released to him for the purposes of hiring an appellate attorney, neither the personal representative nor the Magistrate Court made these funds available for this purpose.

Then - after the time to retain counsel for his appeal has passed - the Magistrate Court held a hearing on March 7, 2007 and authorized the use of these funds to satisfy administration costs for the estate. As a result, \$24,775.00 from the \$37,174.30 available from the liquidation of the stocks were used for Estate expense rather than the purpose of hiring legal counsel for Mertens in his criminal case despite the clear language of the will and a Federal Court order releasing these funds to Mertens to hire an attorney, the Court claimed to be uncertain who the assets belonged to and erred. (R:375).

The series of events that occurred in the Magistrate Court concerning the stock certificates is nothing short of shocking. Mertens' ownership of these assets was recognized early on in the Probate proceedings. He has made clear and concise claims of ownership of these assets throughout the course of this case, yet neither



the Magistrate Court nor the personal representative made any reasonable efforts to resolve his claims of stocks that were one hundred percent of his ownership in a timely manner. This forms some of Mertens' claims on appeal.

The Magistrate and District Court erred in reviewing this particular claim and others by finding that Mertens failed to identify any motion order where he requested or denied the relief he now seeks on appeal. When in fact, a review of any portion of the record reveals that Mertens requested release of these funds at every hearing and the record is replete with motions he submitted on this issue. To hold otherwise is ludicrous. Mertens thus asks that he be provided with the total sum \$37,174.30 of funds that resulted from the liquidation of the stock portfolio. Also, a review of any portion of the record reveals prejudice towards Mertens by the Lower Courts and serious misconduct committed by the Court appointed Estate Representatives - Diehl and Scutier, because of these actions, all issues raised in this appeal should be considered and the record reviewed for error.

This Court should Review Mertens' Allegations Against Dan Featherston That Were Overlooked By The Court Of Appeals, District Court, and Magistrate Court.

Robert Mertens was named as the individual executor of the estate of Marcella Mertens (R:68). This will was to be executed without the intervention of any Court. Although Marcella died on March 21, 2004, and the terms clearly named Robert as executor, he was also the subject of a Federal indictment in the United States District Court for the District of Idaho. Given the apparent complications that might arise as a result of administering the estate affairs while incarcerated, Mertens retained the services of Dan Featherston to act in his stead as personal representative of the estate as directed by Mertens. Featherston's appointment was accomplished by Mertens providing him with a significant fee of \$4,000.00.

Despite Mertens retainer of Featherston to administer the affairs of the estate, Mertens and other heirs would soon decide to remove Featherston as personal representative. See listed under - 6/13/14 clerk's certificate of Exhibits, "Executor's Motion to Intervene as Personal Representative in Testacy." filed March

30, 2005. Featherston made fraudulent claims to Mertens' personal property on behalf of the estate that were located in the Syringa Heights residence and obstructed him from accessing the stock funds specifically released to Mertens by the Federal Court for the purpose of retaining counsel on appeal. Featherston's acts and/or omissions ultimately prevented Mertens from retaining private counsel in relation to his Federal criminal case and the remaining heirs sought his removal as well (R:77-78). In the interim, Mertens was convicted in Federal Court and sentenced to the equivalent of Federal life imprisonment.

On 12/26/03, the stocks were turned over to attorney-Daniel Featherston, for his services to litigate the stocks in a timely manner so Robert could hire-Mr. Douglas Phelps, to represent him at his August, 2004 trial. Daniel Featherston then failed to accomplish any of the tasks he agreed to do. Featherston, then unethically and illegally withheld all the stocks and some dividend checks attributed to these stocks for 1 1/2 years over Robert's numerous and well documented complaints made to him during this 1 1/2 year time period and to the Probate Court. (R:195, 278) See transcript from 7/29/05 Probate hearing, Page-6, Par.-5 Page-9, Par.12-20. See listed under - 6/13/14 clerk's certificate of Exhibits, "Application for order to show cause of contempt; and Request for Sanctions," filed September 22, 2005.

During the time period from May, 2003 till Featherston's Court removal as Personal Representative of Marcella Martens' Estate in Sept, 2005, Daniel Featherston, committed unethical acts regarding the stocks which is well documented on Probate Court record. In fact, during this time period Featherston had stolen from Robert Mertens' mail delivered to the Estate Sandpoint residence (3) Stock Dividend checks related to the released stocks and (3) "Kinross Gold Corp. stock certificates" of Robert's full ownership and then withheld them from Robert without his knowledge for 11/2 years until they were identified to the Probate Court on 9/8/05 in a (Addendum to Stock Certificate Inventory and receipt)(R:179-196) See 3/7/07 Court transcript Page- 23-24, par.1-26.

Consistent with a U.S. 10/7/03 Federal Stipulation/Order, Mertens sought release of the Stock Portfolio (Many registered in his sole ownership) for retaining

Counsel in his Federal criminal case, which was not fairly considered by the lower Court. (R:146)

Featherston was subsequently ordered to complete an inventory of any assets and debts of the Estate by late June of 2005. However, Featherston refused to abide by this Order and the Federal 10/7/03 stipulation/order in a timely and ethical manner. On Sept. 1, 2005, a "Order to show cause of contempt" was issued and filed against Featherston by the Magistrate Court for his unethical actions regarding the stocks and Estate affairs. The lower Court promised to conduct a hearing on this matter after the stocks were turned over. This, however, inappropriately never occurred. (R:179, 180) A hearing should now be ordered to address - Daniel Featherston's numerous unethical actions regarding withholding the Federal released stocks and handling of Estate affairs as detailed in the record.

In late June, 2004 Robert had enough of Featherston's unethical actions and excuses and fired him during a telephone conversation to his Law Office and sent him a written, signed letter by first class mail also notifying him that he was fired and to cease all representation of Estate affairs in his behalf. Also, to transfer the personal representation of Marcella Mertens' Estate to local Sandpoint Businessman - Cam Dallyn owner of Family Time video store in Sandpoint, Idaho. Mr. Dallyn, was reputable and qualified individual that was ready to assume the full responsibility of being the personal representative of Marcella Mertens' Estate. In June, 2004 Robert transcribed and mailed a signed legal letter to - Cam Dallyn, granting him permission to be appointed as the personal representative of the Estate. A few days after - Cam Dallyn, received the letter, he met with Featherston at his Sandpoint Office and presented him that letter and asked to be appointed as personal representative. Featherston then unethically obstructed Mr. Dallyn from being appointed as personal representative of the Estate as I directed him to do. Mr. Dallyn verified to Mertens that Featherston made these deceptive claims in his 7/7/04 letter addressed to Robert, quote - "He (Dallyn) stated that was more then he'd bargained for". Which is a deceptive and untruthful statement. Mr. Dallyn was willing and ready to assume full responsibility of being personal representative of

the Estate at that time. Featherston's 7/7/04 letter verifies that Robert fired Featherston in late June, 2004 and directed him to relieve himself as personal representative of the Estate. (R:382) All of Featherston's paid services should have ended at that time. Mertens also directed Featherston in late June, 2004 to turnover the stocks (Some 100% of Robert's sole ownership) to Cam Dallyn, which Mr. Dallyn asked him to do at their Office meeting in July, 2004 and Featherston did not return them and continued to illegally withhold them until Sept. 2005. (R:188-202) Review Recordings of 7/29/05, 8/31/05, 11/21/05, Court Hearings.

From June, 2004 till Appellant's trial in Aug. 2004 Mertens made numerous demands by telephone and by letters mailed to Featherston's Office for him to turnover the stocks to - Cam Dallyn and or Douglas Phelps, and Featherston ignored Robert's respectful requests and willfully obstructed U.S. Judge James Fitzgerald's 10/7/03 stipulation/order and illegally withheld stocks of Robert's full ownership or interest and obstructed Robert's choice of personal representative replacement. See transcript hearings of 7/29/05,(pages 5, 6, 7) 8/31/05, (pages 3-6, 9,14) 11/21/05 (pages 6-8, 11-13).

On 5/24/05 the lower Court ordered Featherston to turn over the stocks and give a full inventory of the Estate by June 14, 2005. Featherston ignored and violated this Court Order. (R:137) Because of these unethical actions, the lower Court issued a 9/1/05 "Order to show cause of contempt" and the stocks and Estate inventory was finally provided to the Court by Featherston, but the lower Court inappropriately refused to address Featherston's serious misconduct which appellant raised with the Court in numerous Court motions and in open Court. All these motions and Mertens' complaints should now be fairly considered and reviewed. (R:265) See 8/31/05 Court transcript, page 3, par.12-25, page 4, par.8-22, page 14, par.8-14.

On July 1, 2004 a letter by Featherston was mailed to Mertens which he received. In that 7/1/04 letter generated by Featherston he admits all his services provided to Mertens as of 7/1/04 were paid in full. Notice Featherston's own statement made in that letter, quote - "When Bob's present problems occurred some

13 months ago, he called me. I spent a lot of time and several trips to Coeur d' Alene, all of which I have been paid for." The record and above evidence verifies that Mertens fired Featherston in June, 2004 for him not fulfilling the terms of their 3/26/04 notarized agreement and their oral agreement of him acting in Mertens' behalf and direction regarding Estate affairs. (R:072) Because of the facts regarding the above agreements made between Featherston and Mertens, Robert had the right to fire Featherston in June, 2004. See listed under - 6/13/14 clerk's certificate of Exhibits, "Robert Mertens' Reply Brief," filed July 31, 2009 appendix-A, B.

In June, 2004 Mertens relieve him as personal representative of the Estate. At that time Featherston had committed mail theft of stock dividend checks related to stock released by a Federal stipulation order and theft of securities - (74) shares of "Kinross Gold Corp." that were mailed to Robert's Sandpoint address (723 Syringa Heights Road) in (3) separate stock certificates. These (3) stock certificates were 100% Robert's ownership and were deceptively and illegally withheld from Robert from May, 2003 until Sept. 8, 2005 when they were revealed in Featherston's suspicious (addendum to stock certificate inventory and receipt) without Robert's consent of being in possession of these securities. (R:196, 720-724) These above facts alone verify that Featherston's \$5,070.00 bill submitted to the lower Court for this services rendered after June, 2004 was excessive and inappropriate and was paid out of appellant's stock funds should now be ordered returned.

After Featherston's service were rightfully terminated by Mertens in June, 2004, Featherston continued to unethically act as personal representative of the Estate and illegally withhold the stocks from Mertens which lead to Mertens being billed for excessive and unwanted services that totaled \$5,070.00 and he was forced to trial with a incompetent Court appointed attorney which lead to a questionable conviction which needs to be on appeal to the Ninth Circuit of Appeals at a considerable expense and hardship to Mertens. After Robert's unfair conviction directly contributed to not having a paid and competent trial attorney, he made arrangements with Sagle, Idaho resident - Linda Byars (a qualified local

Businesswoman) to recover his stocks and Dividend checks of his ownership that were being illegally withheld by Featherston and to stop him from providing any more unwanted legal services and relieve him of the personal representation of Marcella Mertens' Estate. In late fall of 2004, Robert signed over a Full Power of Attorney to Linda Byars, to accomplish the above tasks and to fire Mr. Featherston again which she did. (R:132, 133) See listed under - 6/13/14 clerk's certificate of Exhibits, "Executor's Motion to Intervene as Personal Representative in testacy, filed 3/30/05, Exhibit-1 and Exhibit-4.

Linda Byars then telephoned Daniel Featherston at his Office and informed him of the above duties I hired her to accomplish and mailed him a copy of the (Full Power of Attorney) that Robert signed over to her giving her the Legal Authority to fulfill these tasks. Byars, also set-up a appointment at Featherston's Office to pick-up the stocks. Robert also telephoned Featherston's Office and directed him to turnover the stocks to Linda Byars, as soon as possible. Linda Byars then went to Featherston's Office at the agreed upon scheduled time to pick-up the stocks and was stood-up by Featherston and not given the stocks. Ms. Byars then telephoned Featherston's Office on numerous occasions in 2005 attempting to arrange for the pick-up of the stocks and all her requests went ignored. Robert also mailed several more letters to Featherston's Office requesting that the stocks be turned over to Linda Byars, and all these demands went unethically ignored. Linda Byars provided a signed letter to the Magistrate Court verifying Featherston's misconduct regarding the stocks and more. Daniel Featherston then unethically charged the Estate for these egregious actions in his \$5,070.14 bill that was submitted to the lower Court and unfairly paid out of Robert's stock funds that were released to him by the 10/7/03 Federal stipulation order to hire trial counsel. See 8/31/05 Court transcript. Pages 7, 8, 9. See listed under - 6/13/14 clerk's certificate of Exhibits, "Notice to the Court," filed May 23, 2007, attachment-3.

Appellant paid Featherston \$4,000.00 to liquidate the released stocks in a timely manner for funds to hire trial counsel - Douglas Phelps for his Federal trial. Featherston's unethical behavior before and during Probate proceedings resulted in

significant and exuberant expense (\$5,070.14) to appellant and prevented him from retaining counsel of his choice on appeal in his Federal case. The Magistrate Court erred by awarding Featherston \$5,070.14 for his excessive bill submitted to the Court for his unethical and unwanted services detailed above. The lower Court so much as considered Mertens' \$4,000.00 prior payment made to Featherston for his services and his serious misconduct committed during his tenure as personal representative. Which should now be ordered returned to Robert. Also, this \$5,070.14 payment to Featherston was made out of Robert's stock funds which he objected to and was inappropriate. The lower Court never considered the violation of the 10/7/03 U.S. stipulation/order on remand. On December 9, 2005 Mertens filed formal objections to Daniel Featherston's Bill for costs associated with acting as Personal representative (R:379-389) See 3/7/07 Court transcript, page 4, par. 5-16. (135-137)

While the Probate Court was in the process of determining Featherston's continued appointment as personal representative, certain heirs began looting the estate residence and stealing both Mertens' personal property and that belonging to the Estate of Marcella Mertens (R:118-131). Mertens immediately sought intervention from the Court and appointed Estate officials to prevent further looting from occurring. During a hearing conducted on this matter, a representative for the heirs acknowledged that a significant amount of Mertens' personal property was located at the Syringa Heights residence (R:133). Yet neither the Court or Mr. Featherston took any preventative measures to recover Mertens' property or prevent further theft from occurring. Featherston was acting as personal representative at the time some of the thefts occurred and should also be held responsible.

Featherston was ultimately removed as personal representative and a supervised administration was ordered in direct contravention of the will. Featherston was subsequently ordered to conduct a complete inventory of any assets or debts by late June of 2005. However, Featherston ultimately refused to abide by this and several subsequent orders directing him to relinquish control of

these assets as directed and complete the requested inventory.

Featherston's obstructive behavior prevented Mertens from obtaining paid competent counsel in time for his Federal direct appeal. (R:165-167) The lower Court promised to conduct a hearing on the matter when the stocks were finally turned over. (R:180) However this never occurred.

A professional video inventory was conducted on the contents of the Estate residence in 2004 by - Video Smith, from Bonners Ferry, Idaho at the request of Mertens to Featherston, which Robert paid for (R:374-375). Mertens has repeatedly sought access to this video to substantiate his theft claims to the Court and Featherston deliberately withheld the video to cover-up the wide spread theft of Estate property and Mertens property and it has never been released to Mertens and the lower Court refuses to view it or address this vital issue. In fact, the lower Court took no action to prevent the theft of Mertens personal property or Estate property for over 2-years from June, 2005 till Aug. 2007 and prevented Mertens from removing his personal property during that time period. Because of these adverse advents, Mertens had compiled an independant inventory of his personal property that was located at the Estate residence that verified and itemized an inventory of approximately \$73,000.00 worth of his personal property that was stolen by Estate Heirs-Charmaine Shields and Darlene Spaulding and her son-Lee Sordelet. See 6/13/14 Clerk's Certificate of Exhibits, "Mertens' Request for Removal of Personal Representative and Stated Objections to Estate Matters," filed August 20, 2007. The lower Court, Featherston and later Court appointed representatives - Scutier and Diehl took no action to prevent the theft of Mertens personal property or Estate property from the Estate residence and should now be held accountable and requested sanctions imposed. (R:337, 338, 365-367) See Clerk's Certificate of Exhibits, "Executor's Motion to Intervene as Personal Representative in Testacy," filed March 30, 2005. (R:562-563, 686) Audio recordings from 7/28/05, 3/7/07 and 8/20/07 Court Hearings.

On 11/22/05 the lower Court ordered the sale of all stocks. Mertens only approved of the sale of the stocks if the proceeds of all the stocks of his ownership



and interest would be deposited in a separate account of his exclusive control and ownership and that none of his stock proceeds would be used for Estate expenses. (R:337) See 11/21/05 Court transcript, page 6, par. 7, par. 14, 18, page 10, par. 22. Audio recordings of 11/21/05 Hearing.

On October 4, 2005, the Personal Representative - Scutier moved to re-open the Estate of Gordon Mertens for the forced liquidation of stocks that Robert had previously inherited from Gordon Mertens in 1992 when his father passed away and were 100% his ownership. Robert objected to these inappropriate actions which the - Idaho Court of Appeals later reconized in Roberts favor (R:1147). Notwithstanding Robert's opposition, the lower Court consolidated the two estates and authorized the liquidation of stock assets Mertens had previously inherited and were released to him by the 10/7/03 U.S. stipulation Order to utilize to hire trial Counsel (R:333-348). Disregarding Robert's rightful opposition, the lower Court authorized the liquidation of his stock assets that Mertens had previously transfered to his ownership under his I.D. Tax number or Social Security No [REDACTED] [REDACTED] years earlier in 1994 after his father, Gordon Mertens, passed away. The lower Court inappropriately directed that Robert's assets be comingled with Marcella Mertens Estate assets and was utilized for Estate expenses. This owner registration of the stocks issue was not addressed on remand. (R:303, 305, 730-737, 324-327, 333-336, 337, 524, 525) A hearing on Robert's ownership and tax registration of the stocks should now be ordered. See 6/28/12 Court Transcript, pages 3, 4, 7, 14, 15, 18, 19. See Idaho Code 15-3902.

Later, the Personal Representative - Scutier, filed with the Probate Court a 12/31/06 Edward Jones stock statement for the stocks that were liquidated (R:420-424). This 12/31/06 statement reveals that \$18,875.40 worth of the stocks were held in the registered name of Robert Mertens individual executor of Gordon Mertens' Estate. These stocks were transfered to Roberts' 100% ownership in 1994 registered under his tax I.D. number and or Social Security No [REDACTED] All of these stocks should have been liquidated by - Daniel Featherston, 5 months before Mertens Federal trial in late August, 2004, in accordance to the 10/7/03 Federal stipulation

order which he was paid in full (\$4,000.00) to do and then illegally withheld by Featherston for 1 1/2 years. Due to J.T. Diehl, unethically misleading the lower Court in regards to Robert's full ownership of these stocks and Scutier illegally taking control of them which Robert objected to and objected to the reopening of Gordon Mertens' Estate, the full amount of \$18,875.40 should now be ordered returned to Robert and all sanctions requested by Mertens against - Diehl and Scutier, in this case at the 6/4/12 Remand Hearing should now be imposed. This \$18,854.40 amount would be utilized by Mertens for him to hire appeal counsel for his current Federal appeal which will include this issue. See 6/4/12 Court Transcript, page 6, 13, par.10-13.

A inspection of the 12/31/06 Edward Jones statement verifies that \$15,256.85 worth of stocks were registered in Robert's name and Marcella Mertens in joint Tenancy, and under Robert's Tax I.D. Number and/or Social Security No [REDACTED]

[REDACTED] A few days after the U.S. released these stocks to Robert on 10/7/03, Marcella Mertens contacted Attorney - Daniel Featherston and Robert's U.S. Court appointed Attorney - D. Ray Barker and agreed to endorse and transfer full ownership of these specific stocks immediately over to Robert for him to utilize to hire his trial attorney of his choice - Douglas Phelps. Featherston and Barker then unethically withheld these stocks from Marcella Mertens so she could not endorse them or take possession of them (R:506-512). These unethical actions continued until Marcella Mertens suspicious death 3/21/04. At the time of her Death, Robert became 100% owner of these stocks in accordance to the terms of Marcella Mertens' (will) and Idaho Law.

Located in the Idaho Court of Appeals 1/17/12 Opinion and Order in this case on page 9, at par.3, is this quote - "Moreover, Diehl appears to have erroneously equated control with ownership when he argued that proceeds from the sale of stock in which Robert claimed interest could be used to pay expenses of Marcella's Estate because funds were not held in Robert's name but were held under the I.D. number of the Estate of Marcella Mertens, we have control of those, I think they are available to us to satisfy Estate expenses." This Appeals Court opinion verifies that

Diehl and Scutier were in illegal control of Mertens' stocks and unethically withheld them and the derived funds for 7-years, and the Appeals Court remanded this case back to the lower Court over this issue and others. Located in the Court of Appeals 1/17/12 opinion on page 8 at par.2, is this statement, quote - "The Magistrate Court did not make a determination as to whether Marcella's will requires or allows that all Estate expenses could be paid out of Robert's inheritance alone. Robert repeatedly objected to the use of the stock proceeds for the payment of Estate expenses." The Appeals Court also remanded this case back to the lower Court over this issue which has not been resolved and needs to be reviewed by this Court. (R:1146, 1147) On 7/23/12 the lower Court issued a - Decision on Remand. On page 4 at par. B-1, the lower Court declared that Robert was the sole beneficiary under Gordon's will verifying that he had the legal right to object to the liquidation of any stocks held in the name of Gordon Mertens or the name of Robert Mertens as Executor of the Estate of Gordon Mertens and to stop that liquidation of those stocks at the Oct. 4, 2005 Hearing and demand their return and stop the reopening of Gordon Mertens' Estate. The lower Court erred by ordering the opposite and the proceeds \$19,202.00 from the sale of those stocks should have been ordered returned on remand. Review Audio recording of 3/7/07 Hearing. (R:1302-1309) See Exhibit-A. See 6/4/12 Court Transcript, page 6, 12.

On remand the lower Court reviewed Scutier and Diehl's billing statements in an attempt to determine the costs and fees attributable to reopening the Gordon Mertens' Estate and liquidating Gordon Mertens' stocks. However, the costs and fees were unprofessionally and innappropriately not segregated or itemized by each Estate as it should have. This is proof that Diehl and Scutier's services and actions caused Robert harm and expense in Estate proceedings and they should have not been Court appointed as Representatives of Marcella Mertens or Gordon Mertens' Estate. These innappropriate billing actions regarding Gordon Mertens' Estate and Robert's stocks of his full ownership were perpetrated to mask excessive billing to the Estate for unprofessional services not wanted by appellant. On March 7, 2007 the Court erred by approving questionable administrative expenses. The Court

unfairly approved payment of \$8,228.85 in attorney fees to Diehl and \$5,602.50 in personal representative fees to Scutier. This total amount \$13,831.35 of fees is obviously excessive considering the above which included fees to liquidate stocks in the name of Robert Mertens as Executor of the Estate of Gordon Mertens, and the \$13,831.35 should now be ordered returned to Robert. See July 23, 2012 "Decision on Remand" order, page 4, 5, par.1, 2. (R:1302-1309, 1312, 1313) Robert objected to Diehl and Scutier being in illegal control and possession of his stocks and stock funds on numerous occasions during Probate proceedings and on 3/7/07 when Diehl claimed erroneous control of Robert's stocks funds. See 3/7/07 Court Transcript, page 10, par.1, 2, 18, 25, page 16, par.7-12, page 20 to 31, page 35, par.3, 4. Mertens reiterated his objections to any of the stock funds being used for Estate expenses at the 6/28/12 Remand hearing. See Court Transcript, page 2, par.23-25. Diehl did commit serious misconduct when he declared in open Probate Court on 3/7/07 and made this deceptive statement, quote - "So at this stage they (stocks) are under the I.D. number of the Estate of Marcella Mertens. We have control of those. I think they're available for us to satisfy Estate expenses." Scutier, as a supposed professional C.P.A. and directly handling the sale of the stocks should have known that this statement made by Diehl was inappropriate and unethical and should have taken appropriate action. Because of these above unprofessional and unethical actions committed by Diehl and Scutier in open Court and others detailed in this motion, and the considerable time and expense it has cost Mertens to litigate these meritorious issues, all of Diehl's and Scutier's fees and expenses charged to the Estate (\$85,000.00) should be ordered returned, pursuant to I.R.C.P.70. (R:1307, 303, 305, 308, 333-337, 391-398, 578, 678, 745). See 3/7/07 Court Transcript, page 11, par.15.

Robert provided stock agent records that Estate occupants - See Sordelet and Estate Heir - Darlene Spaulding were illegally stealing and cashing stock dividend checks of Robert's interest in joint ownership with - Marcella and Gordon Mertens. Sordelet and Spaulding were illegally endorsing these stolen dividend checks with Robert's signature and cashing them without Robert's consent. These stock dividend

records that reflected embezzlement of Estate funds were filed and presented to the Probate Court, Diehl, and Scutier in open Court and they all had full knowledge of these crimes and condoned them and nothing was done about it. These illegal acts continued after Marcella Mertens death on 3/21/04 which Daniel Featherston was fully aware of and did nothing about it. Please inspect cancelled stock dividend check records released from Stock agents which are on Court record. The above is a violation of distribution of Estate funds that the - Idaho Court of Appeals mentioned and remanded on in its 1/17/12 opinion. See page 9 and 10, par.4 and B, of that opinion. The lower Court refuses to address these obvious unethical acts which were prejudicial to Mertens during Probate proceedings and not addressed in the 7/23/12 "Decision on Remand." (R:391-397, 515, 1147, 1302-1309) See Clerk's Certificate of Exhibits, "Mertens' Request for Removal of Personal Representative and Stated Objections to Estate matters," filed August 20, 2007, Inspect Exhibit-J.

On 8/21/07 it was discovered by the Appellant that (2) stocks of Robert's sole ownership were inappropriately and unethically withheld from being sold in a timely manner in early 2006 with the rest of the stocks and with the documentation of the sale of these (2) stocks deliberately withheld by Diehl and Scutier for almost (2) extra years. These (2) stocks (200) shares of - Goldbelt Resources Ltd. and (1,000) shares - Beartooth Platinum Corp. were sold by Diehl and Scutier on 2/27/07 when their market value was worth 1/3 as they were worth in early 2006 when the rest of the stocks were sold. (R:743, 744) Also, another valuable stock of Robert's sole ownership (229) share of - Sunshine Mining and Refining Co. worth hundreds of dollars was deliberately held back from being sold by Diehl and Scutier when they directed the stock broker at (Edward Jones) not to sell this specific stock. (R:569) Mertens then filed with the lower Court several motions contending that Diehl's and Scutier's actions regarding the liquidation of the - Goldbelt Resources and Beartooth Platinum stock was obviously unethical, displayed bias towards Robert during Probate proceedings and incompetence by Diehl and Scutier handling Estate affairs. (R:730-744) In regards to Mertens' complaints, the Magistrate Court transcribed a September 12, 2007 letter to Attorney J.T. Diehl, asking him why

these (2) stocks of Robert's sole ownership were withheld for almost 2-years with no documentation of their sale provided to Robert in a timely and fair manner. (R:739) Scutier, unethically did not respond to the Magistrate's 9/12/07 letter - inquiry until August 7, 2008 almost a full year later and the lower Court did nothing about the unethical delay in Scutier's response or Her actions in regards to these stocks? (R:738) Diehl and Scutier intentionally delayed the sale of these (2) stocks or releasing the funds from these stocks for almost 2-years to impede Robert from utilizing any funds to hire legal counsel in his Federal appeal or this Estate Probate.

On September 15, 2008, Mertens mailed a complaint to the lower Court detailing Diehl's and Scutier's unethical actions handling the sale of these (2) stocks of his sole ownership that were not sold in a timely manner and the funds from the sale of these (2) stocks not being released to Mertens in a timely manner. Mertens also requested \$500.00 in sanctions to be levied against Diehl and Scutier for loss he occurred in the untimely sale and litigating this issue to the Court.

The lower Court innappropriately ignored Mertens rightful request for the \$500.00 in sanctions and for Diehl and Scutier to be removed as Estate Representatives. These (two) were not dis-interested (neutral) professionals as claimed by them and the lower Court. (R:745, 578, 584, 585, 680, 705) See Clerk's Certificate of Exhibits, "Robert Mertens' Reply Brief", filed July 21, 2009. Inspect page 22 of Appendix-B (Complaint Form) See 6/4/12 Court Transcript, page 13, par.10-13, and 6/28/12 Court Transcript, page 4, 7, par.1-3, 14, 15.

Mentioned in the Idaho Court of Appeals 1/17/12 opinion is the quote - "Robert objected to the use of the funds (stocks) for any expenses other then the payment of funeral expenses." and quote - "Diehl responded by explaining that there was a Federal order releasing the funds to Robert, but that the funds were not held in his name." this statement made to the lower Court was known perjury and deliberately misleading. Three stocks (Goldbelt Resources Ltd., Beartooth Platinum Corp., Sunshine Mining) and others were registered in Robert's sole ownership. The other negotiable stocks were all listed with (Robert Mertens) on the Certificates in

some way or form and were registered under Robert's I.D. Tax number or Social Security number and were of his interest and or ownership when Diehl took possession of them in 2005 which he was fully aware of. Due to Diehl's serious unethical actions handling and withholding Robert's stocks, all of his fee's charged to the Estate should be ordered returned and all the stocks should be ordered returned.

Robert should not be held responsible to pay the full amount of the funeral expense from his stock funds. That \$5,457.00 expense should now be ordered pro-rated (4) ways between Estate Heirs in accordance to the "Will" and what the Idaho Court of Appeals 1/17/12 Remand Ordered, and the lower Court refused to address this issue on Remand. (R:1146) Estate Heirs Shields, Spaulding, and Mertens III should now be ordered to pay their pro-rated share of the funeral expense. (R:67-70, 468, 469) See 6/28/12 Court transcript, page 2, par.24-25. All Estate Heirs should now be ordered to pay their pro-rated share of all Estate expenses.

After Marcella Mertens death on 3/21/04, her "Will" stated that Robert became 100% owner of the estate residence. Robert paid and directed Daniel Featherston to evict Estate occupants - Darlene Spaulding and Lee Sordelet from the Estate residence for good cause, which was not accomplished by Featherston. Featherston and Diehl allowed and condoned Spaulding and Sordelet to illegally occupy the Estate residence after Marcella Mertens death on 3/21/04 which violated the strict requirements stated in the Government's (Preliminary Order of Forfeiture) regarding the occupancy of the Estate residence by the occupants - Spaulding and Sordelet, during the time period 3/21/04 until June 2007, when all utilities, taxes and up-keep of the Estate were to be paid by the occupants and they were not. Robert made several objections to these specific expenses being later paid out of Estate funds which violated terms of the Government's (Preliminary Order of Forfeiture). An accounting for these specific expenses should be now ordered and returned to the Estate or billed to Spaulding and Sordelet. Because of the facts, distribution of Estate's funds were violated, which the lower Court failed to address. (R:455-451,747) See 7/29/05 Court Transcript, page 13, par.1-14, and Audio

recording from 8/20/07 Court Hearing. See Clerk's Certificate of Exhibits, "Executor's Motion to Intervene as Personal Representative in testacy", filed March 30, 2005. And "Merten's Request for Removal of Personal Representative and Stated Objections to Estate Matters," filed August 20, 2007. Inspect page 8, 9.

A total amount of \$24,775.00 of Estate expenses were wrongfully paid out of Robert's \$37,174.30 of stock funds released to him by the 10/7/03 Federal Decree for him to hire trial counsel of his choice - Douglas Phelps, that was clearly violated by Featherston, Diehl and Scutier. These unethical actions caused Mertens serious harm being unfairly convicted in U.S. Court because of the incompetent actions of his Court Appointed Trial Attorney - John Miller, and the major expense of appealing Probate proceedings because of the above noticable issues and loss of His personal property and Estate Residence. Appellant made objections to all of these unethical and irresponsible actions through-out the Probate proceedings which is well documented on the record which was not properly addressed by the lower Court. Because of this harm and expenses caused to Mertens the full amount of the stock funds (\$37,174.30) should now be ordered returned to Robert for him to utilize to hire a Federal Appeal Attorney to represent him in his current Federal Appeal. Also, all sanctions requested by Appellant during the Estate proceedings should now be ordered imposed against - Featherston, Diehl, Scutier, Spaulding, Shields, and Sordelet. (R:374-375, 464, 482, 521) See 3/7/07 Court Transcript, page 10, par.1, 2, 18, 25. Page 16, par.7-12. Page 20, par.1-8, 13-25. Page 24, par.1-3. Page 25, par.3-8. (Notice, mentioned unidentified Speaker is Estate Rep. - Patricia Scutier) Page 26, par.3-9. Page 26, par.11-19. Page 27, par.5-11. Page 28, par.16-24. Page 29, par.24, 25. Page 30, par.4-13. Page 31, par.20-23. Page 35, par.34. See 6/4/12 Transcript, Page 6, par.1-3. See 6/12/12 Court Transcript, Page 3, par.17-25. Page 4, par.1-7. See 6/28/12 Court Transcript, Page 3, par.8-16. See 11/14/08 affidavit of J.T. Diehl, Augmented record. See - Clerk's Cetificate of Exhibits, "Mertens' request for Removal of Personal Representative and Stated Objections to Estate Matters," filed August 20, 2007. Inspect page 10, 11.

On 6/28/12, Mertens tried to request the Lower Court to order a list of all



Estate expenses that were unfairly paid out of his stock funds that were erroneously under the control of Diehl and Scutier and for copies of the Stock Certificates and Stock records to verify who's Tax I.D. number they were registered under before they were liquidated, and Mertens was unfairly cut-off by the Lower Court. Robert needed these records to properly present this appeal in District Court and on Remand. These needed records should now be ordered to be returned over to Mertens. See 6/28/12 Court transcript, Page 5, par.1, 2.

Estate Heirs - Darlene Spaulding and Charmaine Shields, obstructed the release of the Stocks of Robert's ownership causing him harm and expense and intervened in the "Will" which Robert did object to, which has not been properly recognized by the Courts in this case. (R:153-161) Shields and Spaulding directly challenged the validity of - Marcella Mertens' non-intervention "Will" and terms of that "Will" clearly state they should forfeit all their interest in Marcella Mertens' Estate for their contestment of the Stocks being released to Robert that he directly inherited from Marcella Mertens' Estate and their contestment of Robert requesting to be appointed Personal Representative of the Estate. The \$46,784.81 disbursement made to each of them should now be ordered returned. Robert objected in Court and on the record to the terms of the "Will" being violated and challenges made to release of Stocks that he inherited from Marcella Mertens' Estate which violated the non-intervention "Will" which has been ignored by the Lower Courts. (R:173-174, 189-191) See 7/22/08 Court transcript, Pages 9, 12, 13. 3/7/07 Court Transcript, Pages 3, 4, 5, 9, 10, 20, 21, 23, 37, 38. (See Exhibit-A) On July 2, 2013 a \$6,784.81 payment from Estate funds were distributed to - Shields and Spaulding, which should now be ordered returned. (R:1466, 1467)

A fraudulent claim was made by the Court Appointed Estate Representatives - Diehl and Scutier, stating that Robert Mertens exercised undue influence on Marcella Mertens which was unfairly used as a excuse to intervene on the Will. Robert submitted substantial evidence to the Lower Court to the contrary and objected to this false claim of "undue influence" as reasoning to deviate from provisions of the last Will and Testament of Marcella Mertens. The Lower Court

and Appeals Court ignored this evidence and vital issue on the record which inflicted harm and a major expense to the Appellant which was unfairly deducted from his Stock funds. This know-false claim of "undue influence on Marcella Mertens" ultimately contributed to a determination of intestacy in the Estate Probate. This issue now needs to be reviewed by this Court because the unfair expense it caused Robert deducted out of his Stock funds which now should be ordered returned. Also, the misconduct committed by Diehl and Scutier over this issue is deserving of sanctions. Here is the true facts of this issue. It was Marcella and Gordon Mertens last wishes to appoint Robert as Personal representative of their Estates. He took good care of his Parents for over 15-years during their retirement years. Marcella Mertens died a suspicious aggravated death on 3/21/04 less then a year after Robert's detention on federal charges in his case.

After Robert's detention on 4/9/03, Estate Heir - Darlene Spaulding and her son - Lee Sordelet, immediately became Marcella Mertens' care providers. Marcella's health declined dramatically after these (two) care providers took charge. Marcella Mertens' aggravated death was directly contributed to abuse that was inflicted to her by Darlene Spaulding and Lee Sordelet. These (Two) care providers deliberately withheld vital medications from Marcella in a blatant and scandalous effort to get her to change her Will making them total beneficiaries of her Estate which Marcella resisted until her tragic death occurred because of these actions. This serious abuse was relaid to Robert from Marcella during a telephone conversation in November, 2003 at the Latah County Jail in Moscow, Idaho. This abuse of withholding vital medications and deliberate neglect of Marcella Mertens health care was verified by - Marcella Mertens own personal Doctor - Robert Rust Jr. from Sandpoint, Idaho in his May 4, 2005 Medical statement - letter that Robert attempted to enter into the Lower Court record on 5/9/05 and was obstructed by Magistrate - Barbara Buchanan. This letter by Dr. Rust, was omitted from the record and not given any consideration by the Lower Court. It details a starkly different set of facts as to whom exerted undue influence on Marcella Mertens and whose actions actually contributed to her aggravated death. Dr. Rust's letter

specifically notes that Marcella Mertens suffered from an ulcer and stricture of the esophagus. Despite Medical instructions by Dr. Rust to Marcella's caregivers Spaulding and Sordelet to continue prescribed medications in 2003 and 2004, the caregivers innappropriately discontinued her prescribed medications and Marcella was "being given [Aleve and Ibuprofen] and medications that caused ulcers." (R:994, 995) "failure to continue the ulcer medications such as Prilosec or Nexium, combined with the treatment with Aleve and Ibuprofen, most likely resulted in the recurrence of her ulcer disease after which Cardiac complications developed and eventually led to her demise." despite the nature of these allegations and a clear bearing on the Lower Court's determination of testacy, the Magistrate Court prohibited Mertens' representative (Linda Byars) from entering this evidence into the record at a scheduled 5/9/05 hearing in this case. Review Audio recording of 5/9/05 hearing. (R:839, 987-998)

The record also reflects that Marcella Mertens had called the Sandpoint Police on 8/27/02 and reported that she was being abused by Estate Heir Darlene Spaulding and her Son - Lee Sordelet. According to records maintained by the Sandpoint City Police Dept. Bonner County Sheriff Deputy - Rush, did a welfare check on Marcella Mertens on 8/21/02 at 723 Syringa Heights Rd. Sandpoint, Idaho (BCSO Case # 02-012135). Former Personal Representative - Daniel Featherston was fully aware of this incident and the abuse of Marcella in 2003 & 2004 and concealed these facts from the Lower Court and Local Law Enforcement.

In June, 2005, Robert compiled a detailed report of the abuse and related tragic death of Marcella Mertens similar to this complaint, and mailed it to Court Appointed Estate Representatives - Diehl and Scutier. They took no action in response and also concealed these facts from the Lower Court and Local Law Enforcement, but charged the Estate for their time to review Robert's Report sent to them which was then unfairly paid out of Robert's Stock funds which was unethical and innappropriate which he objected to in open Court and now. These above facts was substantiated by other documentation on the record establishing Robert's claims of abuse and undue influence on Marcella Mertens and unethical acts he has

been alleging since the outset of these Probate proceedings. (R:682, 683). The Magistrate altogether refused to factor these major facts into the determination concerning the claim of undue influence and intestacy. No undue influence on the part of Robert Mertens was ever substantiated. Fees charged by Diehl and Scutier to intervene on the Will of Marcella Mertens over this undue influence claim was unethical and should now be ordered returned to the Estate and this matter should be remanded for a evidentiary hearing. See - Clerk's Certificate of Exhibits, "Robert Mertens' Reply brief," filed July 31, 2009. Inspect - Appendix-C.

Mertens also asks that the Court review an issue concerning approximately two dozen motions that were filed over the course of a significant amount of time that were pending before the Magistrate Court for a significant period (2-years) of time. These motions contained a number of viable claims concerning the release of assets, the theft of Mertens' personal property, and official misconduct of Estate officials. After Mertens repeatedly requested adjudication of these claims. (See - "Request for Adjudication of pending Motions" filed on 8/1/08)(R:707-709) The Magistrate Court summarily denied the motions in one day without explanation. See - Transcript of 6/23/10 Court Hearing, page 35. This represents yet another crucial lapse in discretion by the Magistrate Court in relation to this Probate case. Mertens asks for meaningful consideration of these motions and a hearing to properly address them.

There is no logical reason why the \$37,174.30 worth of Stocks release to Mertens by U.S. Judge - James Fitzgerald on 10/7/03 by Stipulation/Order were deliberately withheld from Mertens for 9-years so he could not utilize them to hire trial counsel - Douglas Phelps, in 2004. The Magistrate Court was fully aware of this fact and on 6/28/12 displayed bias towards Mertens when the Court warned Mertens the Stock funds would be withheld again by the Court because of Mertens wanting to further appeal the issue of the Magistrate Court doing absolutely nothing in regards to Diehl's and Featherston's blatant misconduct of withholding Mertens' Stocks for years over his adamant objections. Interesting enough, some of the Stocks were of Mertens' sole ownership. See - 6/28/12 transcript, Page 20, par.4-

7. (R:508, 1301)

On July 23, 2012 the Magistrate Court ordered \$13,771.50 returned to Mertens out of the original \$37,174.30 amount, but once again, would only release that partial amount to Mertens quote - "After time for filing an appeal has passed." (R:1308) In mid 2013, Mertens was in dire need of any funds to help him proceed Pro Se with his Federal Appeal including these issues and was coerced into accepting the questionable amount of \$13,771.50 by temporary giving up his appeal of this Stock issue. (R:1384-1386, 1392, 1393) Due to the above unfair events regarding Mertens' Stock funds in this case, Mertens filed a timely appeal of the - 7/2/13 final Estate closing which should now be accepted with all related issues considered. (R:1488-1490, 1496-1506)

Robert objected to the appointment and actions taken by the Estate representatives - Diehl and Scutier, at numerous times during Estate proceedings on the grounds that they were not non-interested individuals as claimed by the Lower Court. They condoned serious illegal acts committed by Estate Heirs - Charmaine Shields and Darlene Spaulding, that violated terms of the Will. They were biased towards Mertens when they condoned blatant unethical conduct by Estate representative - Diehl featherston. Diehl and Scutier, also unethically withheld Robert's Federal released Stocks for 2+years and the released Stock funds for 6+years which caused Mertens loss of his direct appeal over this Constitutional 6th Amendment right to paid, competent trial Attorney. This lengthy appeal has also cost Mertens a major expense. Diehl and Scutier should now be ordered removed from all further Estate proceedings and all their fees charged to the Estate should now be ordered returned to the Estate. The record in this case verifies blatant prejudice against Mertens in this case by Diehl and Scutier. (R:296-314, 670-675, 1307, 1308) See - Clerk's Certificate of Exhibits, "Mertens' Request for Removal of Personal Representative and Stated Objections to Estate Matters," filed August 20, 2007.

The District Court erred when it reasoned and ruled on November 25, 2013 that Mertens original - "Notice of Appeal to the District Court Rule 83(f)" dated

August 2, 2013 was not filed within the (42) day time limit for the filing of an appeal. (R:1527) The District Court doesn't even recognize or mention Mertens' original - Notice of Appeal dated 8/2/13 that was received by the Bonner County Clerk's Office on or before August 9, 2013 when Mertens' "Motion and Affidavit for fee Waiver" application dated and Notarized on August 1, 2013 was filed with the Court (R:1501) Mertens' original 8/2/13 - Notice of Appeal, was mailed along with this 8/1/13 Fee waiver application in the same large mailing envelope at the same time and was received by the Clerk of Court in a timely manner. Stated in that 8/2/13 - Notice of Appeal, on the front page is Mertens' intention to appeal the Lower Court's July 2, 2013 (Estate Closing Order). Interesting enough, this 8/2/13 - Notice of Appeal was never filed with the District Court and the Clerk of Court never notified the District Court of the existence of Mertens' original 8/2/13 - Notice of Appeal, or when it was received by the Bonner County Clerk's Office.

On April 23, 2014 this Honorable Court ordered that Mertens be provided with the Clerk's record of this case. Included in that Clerk's record is a copy of Mertens' original - "Notice of Appeal to the District Court Rule 83(f)", dated August 2, 2013. This Notice of Appeal document dated 8/2/13 is located in the 6/13/14 Clerk's certificate of Exhibits, See - "Request for Order approving Waiver of fees filed September 26, 2013," Inspect Exhibit-A. This convincing and well documented Motion was granted by Magistrate Judge - Lori T. Meulenberg, on 9-30-2013. See (R:1509) For some unknown reason, the Clerk of Court did not file Mertens' 8/2/13 "Notice of Appeal," immediately after that 9/30/13 Court order was issued, which should have been done. Also, the Clerk of Court, never made that 8/2/13 "Notice of Appeal" motion part of the record, which was inappropriate and so, should be recognized by this Honorable Court. (R:1569) Mertens also raised this important issue of the 8/2/13 "Notice of Appeal" motion not being properly filed with the - District Court on Appeal in a similar and detailed motion. See - 6/13/14 Clerk's Certificate of Exhibits, "Motion for reconsideration of the Notice to Intend to Dismiss Appeal," filed December 16, 2013. The District Court failed to recognize and consider the 8/2/13 "Notice of Appeal" Motion that was timely filed in the (42)

time limit from the 7/2/13 "Final Estate Closing," even with Mertens enclosing a complete copy on the 8/2/13 "Notice of Appeal" and explaining the unfortunate events of why it was not properly filed on record by the Clerk of Court. The District Court then unfairly dismissed Mertens' appeal. (R:1525-1528, 1530)

### **Conclusion**

For Good Cause and Reason, Mertens asks that the relief sought below and in this Appellate Brief to be granted.

(a) That - Mertens' 8/2/13 "Notice of Appeal to the District Court" be accepted as timely for Appeal of the 7/2/13 "Final Estate Closing." Also, that due to the unusual and Prejudicial actions allowed against Mertens in this case by the Magistrate Court, that all issues raised in this appeal should be considered and reviewed.

(b) Court Appointed Estate Representatives - Ted Diehl and Patricia Scutier were blatantly biased against Mertens through-out Estate/Probate proceedings and were not non-interested individuals as claimed to be in the Magistrate Court when they were appointed. As such, they should be ordered removed from any further Estate proceedings and all their fee's charged to the Estate Ordered returned. They committed unethical acts against Mertens during Estate proceedings and all sanctions requested on the record should be imposed.

(c) All Stocks funds (\$37,174.30) released by the 10/7/03 Stipulation/Order and unfairly withheld from Mertens for 8-years should now be ordered returned to him in full.

(d) The \$46,784.80 disbursement made to Estate Heirs - Charmaine Shields and Darlene Spaulding (each) should now be ordered returned and they should be barred from all further Estate proceedings.

(e) All Estate Expenses should now be Ordered to be Pro-Rated 4-ways between all 4 Estate Heirs as requested in Marcella Mertens' "Will" and her last wishes.

(f) The Magistrate Court abused its discretion in several respects in this case and on Remand so the entire record in this case should be reviewed for error and any other Relief this Honorable Court deems appropriate.

Respectfully Submitted,

Dated: September 3, 2014

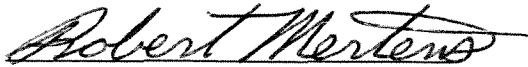


Robert Mertens  
Reg. No. 95642-024  
F.C.I. Pekin  
P.O. Box 5000  
Pekin, Illinois 61555-5000

### Certificate Of Service

I hereby certify that I have placed a true and correct copy of the - Appellant's Opening Brief, in the U.S. Mail, First Class Postage prepaid and properly addressed to the following on this 4th day of September, 2014:

James Theodore Diehl,  
Attorney at Law  
206 West Superior St.  
Sandpoint, Idaho 83864



Robert Mertens  
Reg. No. 95642-024



Robert Mertens Court testimony, Case No. 2004-576 given on 3/7/07 that was mistakenly removed from the record when it was declared (Inaudible) by-Valeri E. Larson, CSR, RPR, as verified by the Idaho Supreme Court on 2/3/2011, CASE NO. 37908-2010

03/07/07 Hearing

**Page 10** (Inaudible) **lengthy litigation over Mr. Featherston's conduct** including him illegally withholding my stocks and related dividend checks for 2 years which were released to me to hire trial counsel.

**Page 10** (Inaudible) **There's** extensive evidence included in my motions and Featherston's own letters that reveal he was paid in full and that I fired him in June 2004.

**Page 17 with Miss Scutier** (Inaudible) accompanying her and verifying her taking the photographs which reveal my stolen property missing which she discussed with her.

**Page 19** (Inaudible) **accounting of what's missing so I can proceed** verify it with Idaho State Police evidence photographs and Chuck Smith's video inventory that was taken in 2003, and then file an inventory with this court of what has been stolen by Spaulding, Sordelet, and Shields.

**Page 21** (Inaudible) I recently provided to this court documented stock transfer agent records of numerous Estate dividend checks of my and my mother's ownership that have been stolen and cashed by Lee Sordelet and Darlene Spaulding.

**Page 23** (Inaudible) **Transfer agent records** and Daniel Featherston's addendum-Inventory record of my Stock Dividend Checks and Stocks stolen by Sordelet and Spaulding out of my mail.

**Page 26 to cash the bonds** (Inaudible) or to cash and stock dividend checks of my ownership.

(Inaudible) The Government siezed a large amount of my mother's personal receipts and records that prove her assets were legitimate.

# In the Supreme Court of the State of Idaho

STATE OF IDAHO  
COUNTY OF BONNER  
FIRST JUDICIAL DIST.

IN THE MATTER OF THE ESTATE OF  
MARCELLA MERTENS AND GORDON  
MERTENS, DECEASED.

2011 FEB 14 P 5:00

ROBERT LEON MERTENS,

ORDER

MARIE SCOTT  
CLERK DISTRICT COURT  
*slk*  
DEPUTY

Petitioner-Appellant,

Supreme Court Docket No. 37908-2010  
Bonner County District Court No.  
2004-576

v.

ESTATE OF MARCELLA MERTENS and  
GORDON MERTENS,

Ref. No. 11-42

Respondent-Respondent on Appeal.

A NOTICE TO THE COURT AND REQUEST FOR ADDITIONAL TRANSCRIPTS was filed by Appellant Robert Leon Mertens on January 11, 2011. Thereafter, a REQUEST FOR ENLARGEMENT and SWORN AFFIDAVIT OF ROBERT MERTENS with attachments were filed by Appellant Robert Leon Mertens on February 2, 2011. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellant Robert Leon Mertens' NOTICE TO COURT AND REQUEST FOR ADDITIONAL TRANSCRIPTS be, and hereby is, DENIED; however, the District Court Clerk shall prepare and submit to this Court, Appellant Robert Leon Mertens, and counsel the items listed below as EXHIBITS, items which were *not* submitted with this Motion, ON OR BEFORE FOURTEEN (14) DAYS OF THE DATE OF THIS ORDER:

1. Audio Recordings for the hearings held on the dates listed below (*pursuant to* Appellant Robert Leon Mertens' Notice to the Court and Request for Additional Transcript, filed with this Court on January 11, 2011): 7/29/05; 8/31/05; 11/21/05; 03/07/07; 08/20/07; and 07/22/08.

IT FURTHER IS ORDERED that proceedings in the above entitled appeal shall be SUSPENDED pending receipt of the exhibits listed above, at which time the due date for the filing of APPELLANT'S BRIEF shall be reset.

DATED this 3<sup>rd</sup> day of February 2011.

By Order of the Supreme Court

*Stephen W. Kenyon*  
Stephen W. Kenyon, Clerk

cc: Robert Leon Mertens, *pro se*  
Counsel of Record  
District Court Clerk

ORDER - Docket No. 37908-2010

Exhibit-A